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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 9 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Policies and Rules
Concerning Operator Service
Providers and Call Aggregators

CC Docket No. 94-158

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF AMERITEL PAY PHONES, INC.

Respectfully submitted,

AMERITEL PAY PHONES, INC.

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SUMMARY

AmeriTel is an interexchange carrier specializing in providing operator assisted long distance services to confinement facilities. It provides critical call screening and tracking equipment and services to over 420 city and county jails located in ten states. AmeriTel works hand-in-hand with sheriffs, police and jailers to provide services that are specifically tailored to meet their unique telecommunications needs. AmeriTel likely would be unable to provide these services, however, if inmate phones were reclassified as "aggregator" phones under the Commission's rules.

When it implemented TOCSIA, the Commission recognized that the "exceptional set of circumstances" surrounding the provision of inmate-only telephones warranted exclusion of these phones from TOCSIA's unblocking and other requirements. No circumstances have changed in the four years since that determination was made which would warrant an abrupt "about face" on this issue.

To the contrary, as was shown by the overwhelming opposition of federal, state, and local government organizations that commented on a similar proposal in the billed party preference docket, effective call control by prison administrators is essential to the smooth functioning of confinement facilities and the prevention of a variety of fraudulent or harassing inmate activities. Effective call control can be obtained only through the combined efforts of the administrators and a single carrier through whom all inmate calls must flow.

This fundamental precondition of prison security and fraud prevention would be eliminated if inmate phones were regulated as "aggregator" phones.

With access to hundreds of OSPs, inmates would be free to prey upon the least sophisticated IXC's to perpetrate their fraudulent schemes, without the knowledge or control of the prison administrator. No network-based solution can match the additional security and fraud prevention presented by today's partnership between a prison administrator and an IXC with the capabilities and desire to meet the "exceptional" circumstances of the prison environment. Accordingly, the Commission should not reclassify inmate only phones as "aggregator" phones under its rules.

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To: The Commission

COMMENTS OF AMERITEL PAY PHONES, INC.

AmeriTel Pay Phones, Inc. ("AmeriTel" or the "Company") hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry on proposed changes to the rules and policies governing operator services providers ("OSPs") and call aggregators.¹ AmeriTel is an Inmate Calling Services Provider ("ICS Provider") -- i.e., an interexchange carrier ("IXC") which specializes in providing operator assisted long distance services to confinement facilities. These services generally involve the provision of coinless telephone service to inmates, usually within the cell in which the inmate is located.² The Company currently provides such services at over 420 city and county jails

¹ Amendment of Policies and Rules Concerning Operator Services Providers and Call Aggregators, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-158, FCC No. 94-352 (released February 8, 1995) ("Notice").

² AmeriTel's services typically are restricted to outward bound collect calls. Access to other types of calls is blocked. This "collect only" service requires positive acceptance of the call by the called party. The called party accepts calls and responsibility for associated charges using a dial pulse, tone or voice response. Because of the potential for fraud and

(continued...)

located in ten states.³ AmeriTel works hand-in-hand with sheriffs, police and jailers at these locations to provide services which are specifically tailored to meet the unique telecommunications needs of such confinement facilities. As explained herein, AmeriTel likely would be unable to provide these critical services if inmate phones were erroneously reclassified as "aggregator" phones under the Commission's rules. The attendant mandatory unblocking of inmate phones would vitiate the call control features which form the foundation of the services provided by AmeriTel to confinement facilities.

I. INMATE-ONLY PHONES ARE NOT "AGGREGATOR" PHONES UNDER TOCSIA.

Pursuant to the requirements of the Telephone Operator Services Improvement Act of 1990⁴ and the Commission's rules implementing it,⁵ call "aggregators" must ensure that telephones on their premises do not block the use of carrier access codes (i.e., "800," "950" and "10XXX" dialing). The underlying purpose of the unblocking requirement is to enable transient callers to reach their preferred carrier from all telephones located in public areas such as hotels and airports. Consistent with this desire, Congress defined "aggregator"

²(...continued)
abuse, the system denies access to live operators, 911 emergency service, 700, 800 and 900 numbers, directory assistance, credit card calls, third party calls, and other IXC's.

³ AmeriTel is headquartered in Lees Summit, Missouri and provides service in Missouri, Kansas, Idaho, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Arkansas, and Oklahoma.

⁴ 47 U.S.C. § 226(d) ("TOCSIA").

⁵ 47 C.F.R. §§ 64.703 - 64.708.

narrowly to include only an entity which "in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises."⁶ Institutions which do not serve the public generally were purposefully excluded.

When crafting rules to implement TOCSIA, the Commission specifically considered and rejected the notion that inmate-only phones should be treated as "aggregator" phones. Confinement facilities do not make their phones available to the "public" or to "transient users." On the contrary, their phones are only made available to persons who are involuntarily detained. Moreover, unfettered dialing by prisoners historically has not been permitted by correctional institutions in order to prevent fraud and abuse. For these reasons, the Commission concluded in 1991 that the provision of inmate-only phone services in confinement facilities "presents an exceptional set of circumstances that warrants their exclusion" from the definition of "aggregator" and the unblocking requirements imposed upon such aggregators.⁷

Nothing has happened since this determination was made only four years ago which would warrant a reversal. Such an "about-face" on this issue can be justified only if the Commission supplies a "reasoned analysis" supporting the reversal in policy.⁸ As the Supreme Court explained,

⁶ 47 U.S.C. § 266(a)(2).

⁷ Policies and Rules Concerning Operator Service Providers, Report and Order, ¶ 15 (released April 15, 1991). Notably, phones provided by prisons for the use of the public, such as those in visitation areas, were not excluded and are covered by the unblocking rules. *Id.*

⁸ See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (DC Cir. 1970), cert. denied, 403 U.S. 932 (1971).

A settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to.⁹

No material change in circumstances has occurred which would supply a basis for such a change in policy. Prisoners are no more "transient" now than they were in 1991, and as will be shown hereafter, the need for jailer control over prisoner calling practices is more compelling now than ever before.

II. CALL CONTROL IS ESSENTIAL TO THE SMOOTH FUNCTIONING OF CONFINEMENT FACILITIES.

The proposition that telephone service at confinement facilities differs substantially from the telecommunications market at large is nearly self-evident. Incarcerated individuals are there because they represent a threat to society, and because they have demonstrated a propensity to engage in criminal behavior. Consequently, prisoners have been deprived of many basic freedoms and choices afforded to other citizens, and jailers are appointed to control the behavior of inmates and make certain choices for them.¹⁰

⁹ Motor Vehicle Mfrs. Assn. v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 41-42 (1983) (citation and internal quotations omitted); see, United Church of Christ v. FCC, 707 F.2d 1413 (D.C. Cir. 1983) ("abrupt shifts in policy" constitute "danger signals" to a reviewing court).

¹⁰ See generally, Project, Twenty-Third Annual Review of Criminal Procedure, 82 Geo. L.J. 1365 et. seq., (1994) (survey of cases involving prisoners' rights). Indeed, it is clear that significant deprivations of access to telephones are permitted where justified by legitimate administrative needs. See, e.g., Benzel v. Grammer, 869 F.2d 1105, 1109 (8th

(continued...)

Telecommunications rank high among an array of services provided to correctional facilities which must be placed under the auspices and control of jailers and wardens. Without proper controls, prisoners in the past have routinely and seriously abused the availability of such telecommunications services. Examples include:

- The planning or continuation of criminal enterprises and conspiracies from within prison.
- Plotting of escapes from prison.
- Maintaining relationships with former co-conspirators or other criminals in violation of the terms of incarceration.
- Placement of threatening phone calls to witnesses, judges and police.
- Placement of harassing phone calls to victims.
- Extensive use of fraudulent schemes to avoid payment.

These abuses can be prevented only if jailers and wardens can exert reasonable control over the provision of telecommunications services to individuals incarcerated at their facilities. ICS Providers such as AmeriTel have developed a package of service enhancements which enable jailers to monitor and control inmate calling without prohibiting outbound calling by prisoners altogether. For example, AmeriTel enables correctional facilities to limit the length of calls, restrict the time of day when calls can be placed, block access to certain telephone numbers, and receive detailed daily reports on the calling patterns

¹⁰(...continued)

Cir.) (prison telephone policy prohibiting inmates in segregation unit from calling nonattorney, nonrelative males justified by interests of security and rehabilitation), cert. denied 493 U.S. 895 (1989).

of individual inmates. By utilizing these AmeriTel service enhancements effectively, jailers can maintain reasonable control within their facilities.

However, each of these services is premised upon one critical fact -- that virtually all outbound calls placed by prisoners are routed to and completed by the ICS Provider which is preselected by the jailer and working in tandem with the jailer to monitor prison calls. This fundamental precondition would be eliminated by regulating inmate phones as "aggregator" phones, since prisoners would be free to utilize the services of any among scores of long distance companies without any involvement by the jailer or warden. Prisoners could bypass each of the ICS Provider's critical call control features simply by dialing the access code of a different IXC.

These concerns are not hypothetical or imagined. Late last year the Federal Bureau of Prisons informed the Commission that it had "uncovered numerous instances at federal prison facilities where prisoners have manipulated and coerced live operators into placing telephone calls to victims and witnesses home numbers, altering billing methods, allowing calling cards, or operators not recognizing the screen coding and placing a call that is prohibited."¹¹ Similar abuses were reported to the Commission by numerous state, county and local jailers. For this reason, law enforcement officials have uniformly opposed any Commission edict which might jeopardize their current capability to control and monitor inmate telephone use. As Attorney General Janet Reno told the Commission last year, "[t]his capability is crucial in maintaining the security of correctional facilities, the safety of

¹¹ Ex Parte Comments of the Federal Bureau of Prisons, United States Department of Justice, FCC CC Docket No. 92-7 (filed Nov. 22, 1994).

the general public, and special protections for victims and witnesses of crime."¹²

Consequently, prison officials strongly opposed a previous Commission proposal (i.e. Billed Party Preference), in effect, to transfer the choice of IXC's in prisons from prison wardens to inmates. Reclassifying inmate-only phones as aggregator phones suffers from the same failings.

III. CLASSIFYING INMATE PHONES AS AGGREGATOR PHONES WILL PRECLUDE EFFECTIVE CALL AND FRAUD CONTROL.

A. Rules Applicable to "Aggregators" Preclude Effective Call Control.

To provide a comprehensive system of call control, ICS Providers employ special premises-based equipment which interacts directly with the inmate and the called party to create the capability to track, audit and control the calling process. As noted above, these premises-based systems can limit the destination numbers which may be dialed by each inmate, block access to specific telephone numbers, limit the length of calls, limit the time of day during which calls may be placed, prevent call forwarding and provide identification to the call recipient that the call is coming from a confinement facility. They also can facilitate critical call detail reporting services on an expedited basis. In special situations, such as escapes, important information can be provided almost immediately.

Unblocking of inmate-only phones would strip correctional facilities of the ability to control inmate calls in this highly effective and streamlined manner. Inmates would be free

¹² Ex parte Letter of Attorney General Janet Reno in FCC CC Docket No. 92-77 (dated Oct. 31, 1994).

to bypass the ICS Provider's specialized call control CPE simply by dialing the access code of any of scores of other locally available IXCs. Also, if inmates can access any of literally hundreds of IXCs, the confinement facility loses any practical ability to track, monitor or control individual inmate calling.

B. Unblocking Could Cause Telephone Fraud To Increase Dramatically.

The services currently provided by ICS Providers also serve to reduce telephone fraud. Due to the special nature of the submarket which they serve, ICS Providers engage in extensive real-time monitoring of prisoner calling to detect and deter fraudulent calling. The call control features utilized by ICS Providers are critical to fraud prevention as well. Indeed, fraud control and call control are inextricably intertwined. History has shown that most telecommunications fraud in the prison environment often is the result of collusion between the inmate and the called party. ICS Providers can minimize this threat by tracking the total interaction between the calling (prisoner) party and called (billed) party. Unblocking of inmate-only phones would eliminate this important fraud prevention activity by enabling the inmate to continuously shift his long distance calling among multiple IXCs.

C. Network-Based Call Control Systems are Inadequate.

Opponents of the present system have suggested that the call control functions currently provided by premises-based ICS Providers such as AmeriTel could be incorporated into the long distance networks of all IXCs. A network-based "solution" would almost

surely fail because it would enable prisoners to engage in unbridled "carrier hopping." In order to detect and prevent fraud from prison locations, IXC's must conduct sophisticated call monitoring and screening, much of which is particularly tailored to prison calling. If prisoners are free to route calls to any IXC they wish, they would be able to shop for the IXC's with less sophisticated fraud prevention systems, and then defraud the unsuspecting carrier. If a fraudulent calling scheme is detected by one IXC, the prisoner could simply select another IXC as his service provider and continue the same fraudulent scheme. This presents a particularly dire threat to new IXC's, small IXC's and carriers which do not control their own networks (such as switchless resellers).

Except for MCI, AmeriTel is aware of no IXC which offers inmate call control systems using a centralized network solution.¹³ The feasibility of a network-based solution cannot be measured against the capabilities of large companies such as MCI. Since prisoners would be free to choose any IXC from unblocked phones, any network-based solution must be assessed by considering the capabilities of the smallest and least sophisticated IXC's. Obviously, very few IXC's possess either the financial or technical resources of MCI.

Moreover, any network-based system of call control is critically dependent upon the receipt of ANI "29" signalling from the LEC's. The ANI "29" signal identifies the call as originating from correctional facilities and warns IXC's to take appropriate precautions. However, many LEC's, particularly those in the rural areas where prisons are frequently located, do not offer or do not have the capability to carry the ANI "29" code. Thus, the

¹³ It is worth noting that many jailers and wardens have rejected use of MCI's system as insufficient to meet their special needs.

Commission would be forced to mandate that every LEC upgrade their facilities to provide ANI "29." It is unreasonable to impose this requirement on all LECs when companies such as AmeriTel already provide services which solve the problem.

D. Mandatory Unblocking Would Be Counterproductive.

Most correctional institutions lack the funding required to replace existing on-site equipment (which today is installed and maintained for free by the ICS Provider) with CPE of their own. In addition, it is unrealistic to expect that jailers would be able to assemble the requisite calling pattern data from the hundreds of IXC's which inmates could access through unblocked phones, and particularly unrealistic to assume that such information would be available to officials in time to respond to crisis situations.

In the end, prison officials would be likely to resort to the "old fashioned" way of controlling telephone use and fraud; i.e., by restricting inmate access to telephones and imposing strict personal supervision over individual calls.¹⁴ This would significantly reduce prisoners' ability to communicate with their families and friends, an outcome which is precisely contrary to the Commission's presumed goal of improving prisoner access to communications services.

¹⁴ See, e.g., Comments of the American Jail Association; Comments of the Monmouth County (NJ) Correctional Institution, and Comments of the California Department of Corrections, filed in Docket No. 92-77 (filed August 1, 1994).

IV. EXCESSIVE RATES ARE NO LONGER A SERIOUS PROBLEM IN THE INMATE PHONE MARKETS.

The loss of the benefits of the current system must be measured against the anticipated benefits to be derived from altering the status quo. According to the Notice, the Commission is reacting to "numerous informal complaints" which "object to high rates charged by the presubscribed carrier for inmate-only telephones."¹⁵ There can be no doubt that there have been isolated instances of overcharging, but this problem already has largely been cured. Many state PUCs already have established mandatory rate ceilings for ICS Providers.¹⁶ Moreover, most correctional facility administrators are now sensitized to the overcharging issue and contractually require that ICS Providers not charge in excess of dominant carrier rates for collect calls originating from their facilities.¹⁷

As a result, approximately 60% of AmeriTel's present traffic is covered by dominant carrier rate caps. Calls not subject to rate caps do not exceed AT&T rates by more than 25%; and AmeriTel's charges have never exceeded the rates charged by AT&T for person-to-person calls.¹⁸ Importantly, AmeriTel's experience is not unusual. In Docket No. 92-

¹⁵ Notice ¶ 9.

¹⁶ Notably, an unusually large percentage of the traffic handled by ICS Providers is jurisdictionally intrastate and subject to state regulation.

¹⁷ For example, in Comments filed only last summer in FCC Docket No. 92-77, state correctional authorities in California, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, South Dakota and Washington all stated that their service contracts require rates at or below those charged by dominant carriers. Numerous county and local jailers also said they limited rates to those charged by dominant carriers.

¹⁸ See Ameritel ex parte submission dated November 2, 1994 filed in CC Docket 92-77.

77, Value-Added Communications ("VAC") submitted a study of recent requests for proposal ("RFPs") for inmate phone services. VAC found that 77% of surveyed RFPs issued since January 1993 required responding ICS Providers to charge at or below dominant carrier rates. An additional 9% of such RFPs were awarded to an IXC which proposed to charge rates no higher than those of the dominant carrier. Thus, 86% of successful bidders charged no more than the dominant carrier would have charged for the same call.¹⁹

The fact is that there has been no showing that overcharging among ICS Providers has ever been a serious or pervasive problem. Further, isolated instances of such overcharging have declined and jailers will continue to ferret out any remaining abuses. Certainly, the potential for correcting any remaining rate problems does not outweigh the public benefits which would be sacrificed if inmate-only phones were reclassified as "aggregator" phones.

V. CONCLUSION

Calling from correctional facilities differs significantly from the operator services market as a whole. Inmate calling presents threats and concerns that are peculiar to the inmate services sub-market. These issues are best addressed by local prison officials, in partnership with a provider of the specialized services preselected by the institution. Unblocking prison phones would require officials to sacrifice local control and its

¹⁹ See Comments of VAC filed August 1, 1994 in Docket No. 92-77.

accompanying benefits. Accordingly, the Commission should not reverse its previous conclusion that prison phones are not "aggregator" phones.

Respectfully submitted,

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